

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of

Applications of

**Comcast Corp.,
Time Warner Cable Inc.,
Charter Communications, Inc., and
SpinCo**

**For Consent To Transfer Control of
Licenses and Authorizations**

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MB Docket No. 14-57

**JOINT REPLY
OF
LINCOLNVILLE NETWORKS, INC., TIDEWATER TELECOM, INC.,
OXFORD TELEPHONE COMPANY, OXFORD WEST TELEPHONE
COMPANY AND UNITEL, INC.
TO
OPPOSITION OF APPLICANTS**

In accordance with the Public Notices issued by the Commission in this proceeding, on July 10, 2014 and December 3, 2014, Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, Oxford West Telephone Company, and UniTel, Inc. (the “Maine RLECs”) hereby submit their Joint Reply to the Opposition to the Maine RLECs’ Petition to Deny Applications, which was served by Comcast Corp. and Time Warner Cable Inc. (collectively the “Applicants”) on September 23, 2014. As demonstrated herein, the Applicants provide no meaningful response in their Opposition to the issues and arguments presented by the Maine RLECs’ in their Petition to Deny. Rather, the Applicants engage in collateral and baseless criticisms of the Maine RLECs and their positions. In doing so, the Applicants completely fail to address the core issues of the merger’s uncompetitive impacts on the RLECs and harm to the public interest in universal service. Accordingly, the Applicants have failed to meet their burden of proof. Therefore, unless appropriate conditions as described in the Maine RLECs’ Petition to Deny are adopted, the Applications must be denied. In further support of this conclusion and the Petition to Deny, the Maine RLECs state as follows:

I. Standard of Review: Protection of Universal Service

In their Opposition, the Applicants concur with the general statement of the standard of review described in the Maine RLECs' Petition to Deny, that the merger must "serve the public interest." (Petition to Deny, p. 6; Opposition, p. 25.) However, the Applicants fail to recognize that the public interest to be protected in a merger approval proceeding encompasses "the broad aims of the Communications Act," and the broad aims of the Communications Act include the goals of universal service. (Petition to Deny, p. 6-7.)

In addition, as the Commission has further made clear, the Applicants bear the burden of proof, by a preponderance of the evidence, that the merger serves the public interest in attaining and preserving universal service. (Petition to Deny, p. 6.) If the Applicants fail to meet this burden, conditions may be imposed to ensure the public interest is served. In this case the Applicants have not even attempted to meet their burden to show that the public interest in universal service is served. The Applicants' failure to recognize and address the public interest in universal service constitutes a fundamental legal deficiency in their case.

On the other hand, the Maine RLECs have presented specific allegations of fact, supported by evidence described in the Petition to Deny, that make out a prima facie case that the approval of the merger as proposed would not serve the public interest, including the public interest in universal service; and that raise substantial and material questions of fact as to whether approval of the merger would serve the public interest, particularly given that the Applicants have not even addressed this issue.

The Applicants' Opposition presents no evidence to disprove the specific factual allegations presented by the Maine RLECs. Rather, the Applicants make pejorative accusations against the

Maine RLECs which are baseless¹, and present irrelevant and misleading citations to cases decided by the Maine PUC, which, as discussed herein, do not support the Applicants' contentions. In fact, upon close examination, the cited cases often disprove the Applicants' contentions.

As demonstrated in the following Section II, the assertions made by the Applicants in the Opposition fail in their attempt to disprove the allegations and evidence presented in the Petition to Deny. Accordingly, the Application as it stands must be denied, unless appropriate mitigating conditions are imposed.

II. The Maine RLECs Have Demonstrated that the Proposed Merger Threatens the Continued Ability of the Maine RLECs to Meet the Goals of Universal Service.

As stated in their Petition to Deny, each of the Maine RLECs is a small incumbent rural telephone company, and a designated provider of universal service in a rural area of Maine pursuant to 47 U.S.C. § 254(c). In addition, each of the Maine RLECs is also required by Maine law to furnish provider of last resort ("POLR") service and to maintain its network, ubiquitously, within its service area. As demonstrated by their eligibility for federal high cost USF support, the Maine RLECs have service territories with relatively higher costs to serve compared to non-rural areas of the state. However, due to a combination of their efficient, community-based operations, previously limited landline competition, and certain limited and increasingly threatened levels of

¹ The Applicants begin their response to the Maine RLEC's position, that the Applicants' cable telephone service will cause undue economic burden on the Maine RLECs and universal service, by describing the Maine RLECs as companies "whose hostility to competition is a matter of record before the Commission." In support of this accusation, the Applicants cite Paragraph 8 of the Commission's Declaratory Ruling in *Petition of CRC Communications of Maine, Inc. and Time Warner Cable Inc. for Preemption Pursuant to Section 253 of Communications Act, as Amended*, 26 FCC Rcd. 8259, ¶8 (2011) ("FCC 2011 Declaratory Ruling"), which the Applicants characterize as "describing Maine RLECs' refusal to interconnect". (Applicants' Opposition, p. 191, fn. 595.) Neither Paragraph 8 nor the footnotes to Paragraph 8 contain any such discussion of the Maine RLECs or their views on competition. However, Footnote 26 to Paragraph 8 does describe the 2010 Order of the Maine PUC which denied TWC's effort to terminate the rural exemption of the Maine RLECs and which contained specific findings on the undue economic burden on the Maine RLECs caused by TWC (which are described below at pages 7-8). Moreover, footnote 26 concludes: "We recognize that the Maine PUC has expended significant time and resources in reaching its conclusion that the 251(f)(1) rural exemption should not be lifted in this case, and note that such findings may be useful in future proceedings." (emphasis added) The Maine RLECs respectfully submit that the Commission should now accept the findings of the Maine PUC in the MPUC 2010 Order, described below, as useful in this important proceeding.

universal service support from federal and/or state sources, the Maine RLECs have been able, up to this point, to achieve the overarching purpose of the universal service principles set forth in the Communications Act.

A. Unfair Geographically Selective Competition by the Applicants.

For several years the Maine RLECs have faced competition largely from inter-modal providers such as wireless carriers and nomadic VOIP. In recent months the RLECs have become subjected to the more deleterious form of competition caused by cable telephone service of Time Warner Cable Inc. and its subsidiaries ("TWC"). Because it is reliant on the existence of cable television facilities, cable telephone competition is geographically limited to core areas of the Maine RLECs' service areas where customer density is greater and cable plant has been installed. In effect, cable telephone competition, by its very nature, self-selects the areas within the Maine RLECs' service territories where customers have a lower cost to serve.

This pattern of geographic selectivity which directs cable phone service to the more profitable core areas where cable plant is located is confirmed by an ex parte letter which was submitted recently by TWC's counsel in this proceeding.² The letter, acknowledges that out-of-footprint costs are typically higher and that "out-of-foot construction projects usually do not make business sense" from TWC's perspective. As a result of the cable telephone provider's penchant for "geographic selectivity," universal service providers such as the Maine RLECs will not only suffer the loss of their more economic customers in the core ("footprint") areas to cable telephone providers, but also they must continue to incur the financial burdens of serving the less economic customers in the non-core areas, despite a diminishing revenue and net income.

Ironically, Comcast itself has argued in opposition to the geographic selectivity of a competitor. In Attachments A and B to the Comments of CenturyLink, Inc., filed in this proceeding

² Ex Parte letter from Matthew A. Brill, Latham & Watkins, dated December 15, 2014 and posted on ECFS on December 16, 2014, p. 1-2.

on August 25, 2014, appear two letters from Comcast to municipalities in Colorado.³ Comcast begins these letters by invoking the principle of the “level playing field” for competitors (§2). The Maine RLECs also believe in a level playing field. However, they must point out that there is no level field between the Applicants and small rural telephone companies, the latter of which bear the responsibilities of universal service and other regulatory obligations, have limited financial ability to counter the marketing and pricing power of large competitors, and lack of size and market power to obtain programming at prices which allow them to be competitive.

In its letter to the Colorado municipalities Comcast goes on to invoke the “public policy” that private companies gaining access to valuable rights of way must make their services “available to all residents, and not cherry-pick based on a neighborhood’s ... market potential or any other factor” (§3). Yet, Comcast’s merger partner, TWC, is presently seeking to selectively compete in the core areas of the Maine RLECs, where there is greater market potential; and within those core areas to serve (i.e. “cherry pick”) only the individual customers it chooses to serve, given its absence of any universal service obligations in any area, including the areas in which it chooses to serve. Comcast also cautions in its letters, that competition develop “not according to which provider enjoys the most advantageous regulatory requirements” (§6), despite its own absence of universal service obligations and other regulatory obligations.

The words of Comcast in its letters to the Colorado municipalities argue against the consequences of the merger it contemplates with TWC. The Maine RLECs agree with Comcast’s letters that competitors should be “held to the same standards of fairness and access” (§10). Denial of the Application, or the imposition of conditions as proposed by the Maine RLECs, is necessary to promote this important objective.

³ In their Opposition, page 301, the Applicants dispute CenturyLink’s claims that Comcast opposed the issuance of a franchise to CenturyLink and that Comcast sought to impose unreasonable buildout requirements on CenturyLink in those municipalities. However, the Applicants have not disputed that Comcast said what it said in the letters, as is described in this Reply.

B. Undue Economic Burden on the Maine RLECs

As stated in the Maine RLECs' Petition to Deny, detailed evidence has been introduced in proceedings before the MPUC, which demonstrates that the introduction of interconnected landline cable telephone service, in the Maine RLEC locations where TWC has cable facilities, would cause undue economic burden to the Maine RLECs, and consequently harm the public interest goals of universal service.⁴ The Applicants have not rebutted, let alone even addressed, this evidence. Rather, they erroneously claim that the Maine PUC has "repeatedly rejected" the RLECs' argument that undue economic burden resulting from cable telephone competition undermines their ability to provide universal service (Opposition, p. 192). The facts do not support the Applicants' claim.

In the February 22, 2013, Order of the Maine PUC in the Maine Suspension Proceedings ("MPUC 2013 Order"), which is cited by the Applicants in support of their assertion (Opposition, p. 192, fn 597), the Maine PUC did not reject the RLECs' demonstration of undue economic burden. In fact, the MPUC decided the cases by assuming the existence of the undue economic burden demonstrated by the Maine RLECs for purposes of deciding those cases. (MPUC 2013 Order, p. 9-11.)⁵ Thus, the decision in the 2013 MPUC Order starts from the premise that undue economic

⁴ See *Lincolnton Networks, Inc., Tidewater Telecom, Inc. Oxford Telephone Company and Oxford West Telephone Company, Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC's Request*, MPUC Docket Nos. 2012-00218-00221; and *UNITEL, Inc., Petition for Suspension or Modification of Application of the Requirements of 47 U.S.C. § 251(b) and (c), pursuant to 47 U.S.C. § 251(f)(2) regarding Time Warner Cable Information Services (Maine) LLC's Request*, MPUC Docket No. 2012-198 ("Maine Suspension Proceedings"). The Maine RLECs incorporate into this filing, by reference, the record in the Maine Suspension Proceedings and in other Maine PUC proceedings cited by the Maine RLECs, as publically available on the MPUC's web site at www.maine.gov/mpuc/online/index.shtml.

⁵ The Maine PUC stated, "even if the availability of LNP were to lead to revenue losses in the amounts that LT/OX's (and the OPA's) experts estimate, suspension of LNP is not warranted pursuant to Section 251(f)(2). ... Despite such losses in revenue, the economic burden on consumers of telecommunications in general and on RLECs in particular will not be undue because the Maine law requires that universal service be preserved in any event." Maine Suspension Proceedings, Order of February 22, 2013, in Docket Nos. 2012-00218-221 ("MPUC 2013 Order"), p. 9-11. (A decision in Docket No. 2012-00198 was not rendered due to a voluntary dismissal.)

burden, as described by the Maine RLECs in that case, will result from TWC's cable telephone service.⁶

This is not surprising, given that in an earlier proceeding in 2010, the Maine PUC made factual findings that undue economic burden would result from cable telephone service by TWC, a decision of the Maine PUC that has been completely ignored by the Applicants in this proceeding.⁷ While the Applicants might argue that the Commission's decision to not terminate the rural exemption was based on TWC's failure to meet its burden of proof, the quotations below show that in the MPUC 2010 Order the Maine PUC actually made express factual findings on the economic burden, including the following:

- The projected results for UniTel reflect severe financial consequences if TWC enters its service territory. Based on our findings with respect to the appropriate projections to use for each factor that we have examined, UniTel can be expected to earn a BEGIN SUPER CONFIDENTIAL _____ END SUPER CONFIDENTIAL return on net plant in service by the end of the projection period. This is barely at the break-even level, and is unquestionably lower than any reasonable rate of return. The Company's very survival would be at stake, and it would likely have to take the kinds of drastic

⁶ The Maine PUC justified its refusal to nevertheless suspend the LNP requirement based on another factor, which is increasingly dubious. The MPUC made the critical assumption that support from the Maine Universal Service Fund ("MUSF") would be available to offset the financial burdens imposed by cable telephone competition. The Maine PUC stated "By virtue of the MUSF, LT/OX will receive the financial support necessary to fulfill its obligation to provide POLR service. Consequently, the financial impact of revenue lost through competition with Time Warner is not 'undue.'" (MPUC 2013 Order, p. 13.) Subsequent developments now show that the Maine PUC's assumption regarding the availability of MUSF support to offset the undue economic burden of LNP-enabled TWC competition is no longer reliable. In an Order issued on November 21, 2014, in Northern New England Telephone Operations, LLC, Request for Increase in Rates and for Maine Universal Service Fund Support for Providers of Last Resort Service, Docket No. 2013-00340, the Maine PUC denied a request for MUSF support, stating that neither a forward looking cost model nor a traditional (historical) revenue requirement approach can provide the answer to what is needed by way of funds from MUSF, to support providers of last resort service. (See Order, p. 41.) The certainty with which statements were made in the MPUC 2013 Order regarding the availability of MUSF support is now dispelled by the uncertainty in Docket No. 2013-00340 of questions with no answers. The Maine Legislature is now in the process of reconsidering the need to require the provisions of POLR service and the need for the State to provide MUSF support. In fact, in Docket No. 2013-00340 the Maine PUC recently (December 17, 2014) voted to submit a report and recommendations to the Maine Legislature which describes a proposal to eliminate or substantially reduce the POLR obligations and the MUSF support available to the Maine RLECs.

⁷ *CRC Communications of Maine, Inc., Investigation Pursuant to 47 U.S.C. §251(f)(1) Regarding CRC Communications of Maine's Requests of UniTel, Inc., Lincolnville Telephone Company, Tidewater Telecom, Inc., Oxford Telephone Company and Oxford West Telephone Company*, Maine PUC Docket Nos. 2009-00040 to 00044 ("Maine Rural Exemption Proceedings"), Order (July 9, 2010 ("MPUC 2010 Order)).

steps that, by any definition, would constitute an undue economic burden. (MPUC 2010 Order, p. 48-49.)

- We find that Oxford West would be impacted by the entry of TWC into the market for voice service in Oxford West's territory to a sufficient degree as to cause undue economic burden on the Company, and therefore, that the rural exemption should not be lifted for Oxford West. (MPUC 2010 Order, p. 48.)
- We find that the financial situation of Oxford Telephone would likely deteriorate so severely with the introduction of phone competition from TWC as to be unduly economically burdensome. (MPUC 2010 Order, p. 48.)
- Based upon our findings for each of the factors affecting the income statement for Tidewater, we conclude that the Company's projected return on rate base at the end of 2014 will be approximately BEGIN SUPER CONFIDENTIAL ____% END SUPER CONFIDENTIAL. This is a significant decrease from the BEGIN SUPER CONFIDENTIAL ____% END SUPER CONFIDENTIAL that Tidewater earned in the base year. ... We are not persuaded that a BEGIN SUPER CONFIDENTIAL ____% END SUPER CONFIDENTIAL rate of return is adequate to ensure Tidewater's ability to continue to provide safe and reliable service at reasonable rates and to attract the capital necessary to maintain and improve its network in the face of competitive entry. (MPUC 2010 Order, p. 46.)⁸

These findings of the Maine Commission in 2010 remain undisturbed (including undisturbed by the MPUC 2013 Order which is now misleadingly cited by the Applicants). Under Maine law, these findings, which are a matter of public record, are evidence of the facts stated therein.⁹ These findings of undue economic burden are the foundation upon which the economic burden caused by the combined entity resulting from the proposed merger should be assessed.

Accordingly, in its consideration of the potential impacts of the Comcast-TWC Merger on the RLECs and the public interest goals, including universal service, the Commission should also start from the premise of these demonstrations of economic burden from the MPUC 2010 Order and the MPUC 2013 Order. In addition, the Commission should give due recognition to the current state of uncertainty and doubt regarding federal USF support and inter-carrier compensation,

⁸ With regard to Lincolnville Networks, Inc., the Maine PUC denied TWC's petition to terminate its rural exemption on the grounds that the underlying request to interconnect was "not bona fide." (MPUC 2010 Order, p. 11-12).

⁹ 35-A M.R.S.A. §1319 provides, "A certified copy of an order is evidence of the facts stated in it." (The Maine PUC's posting of its orders on its website is tantamount to proving a certified copy of an order.)

which is now further undermining the Maine RLECs' ability to meet cable telephone competition and to continue to provide universal service.

Therefore, the record shows that undue economic burden exists. The Applicants have done nothing to contest the current state of the record. It must be accepted for purposes of the Commission's decision in this case.

C. Universal Service is Threatened.

In the MPUC 2010 Order, the Maine PUC then went on to address the impact of cable telephone service by TWC on universal service. In doing so, the Maine PUC concurred in many of the arguments regarding universal service which have been presented by the Maine RLECs in their Petition to Deny. The Commission's Order contained the following cogent and timely discussion:

In our view, the overarching purpose of the universal service principles set forth in Section 254(b) of the TelAct is ensure the preservation of a carrier of last resort in rural service territories and that quality telecommunications and informational services are available to all areas, including rural, insular, or high cost areas, at reasonable comparable rates.

... UniTel, Oxford and Oxford West will likely realize marginal rate of returns on net investment by the year 2014 if the rural exemptions were lifted. ... [T]he likely low returns on investment, coupled with the corollary likelihood that the ILECs would be forced to increase rates, would offer a significant impediment to their ability to offer universal service.

We also believe that entry by TWC and CRC into the Lincolnville Telephone Company service territories will impair that company's financial condition to such an extent that universal service will be impaired. ... Lincolnville's current return of BEGIN SUPER CONFIDENTIAL END SUPER CONFIDENTIAL, already places it at risk of being unable to attract capital sufficient to ensure investment necessary to fulfillment of its provider of last resort obligations.

Another principle of universal service that is of particular importance is found at 47 U.S.C. §254(b)(3). This Section provides:

Consumers in all regions of the Nation, including low income consumers and those in rural, insular, and high cost areas should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are charged for similar services in urban areas.

47 U.S.C. §254(b)(3). In a vacuum, we might well find that by proposing to offer its Digital Voice service in portions of the rural territories serviced by the ILECs, TWC is seeking to offer there the same telecommunications service that it offers in urban areas, at similar rates and, therefore, that this tends to advance the universal service principle articulated in § 254(b)(3). However, the magnitude and benefit of any such “advancement” of universal service is severely diminished by the fact that TWC’s network does not reach the least densely populated areas of the service territories of Oxford, Oxford West, UniTel and Tidewater. Moreover, TWC has neither the obligation nor the inclination (given the economic realities of serving sparsely populated areas) to make such services available in all locations within its franchise areas. (MPUC 2010 Order, p. 50-52.)

As pointed out in the Maine RLECs’ Petition to Deny, the Applicants’ Public Interest Statement is completely devoid of discussion of the effect of the merger on the universal service policy and principles. Although the Public Interest Statement contains sections touting the Applicants’ view on the impact on voice services (Sections IV(B)(3) & V(C)(1)) and broadband services (Sections IV(B)(1) & V(C)(1)), their Statement completely fails to make any reference to the principles of universal service. (Petition to Deny, p. 7-8.) Despite the Maine RLECs having made this deficiency clear in their Petition to Deny, the Applicants in their Opposition are again silent on this policy.¹⁰

D. The Impact of the Comcast/TWC Merger on the Maine RLECs.

As pointed out in the Petition to Deny, the consummation of the proposed merger will cause TWC to be part of a cable television empire three times its current size, into which Comcast is poised to funnel substantial additional financial resources. (See Comcast-TWC Application, April 8, 2014, Public Interest Statement, p. 2, referencing Comcast’s “commitment to invest significantly in the TWC systems.”) As a result, the Maine RLECs will be subjected to economic losses to a

¹⁰ The only reference to the term “universal service” in the Opposition (on page 192) is just a quote from the Maine RLECs’ Petition to Deny.

more powerful competitor in the core areas of their rural service territories. As the Applicants have stated, Comcast and TWC "will compete more effectively against communications ... providers with national and global scale." (Public Interest Statement, p. 1.) Direct competition by TWC on such a "national and global scale," including national and global scale marketing, advertising and pricing strategies against the small Maine RLECs will increase the loss of customers in core areas and the economic burden on the Maine RLECs.¹¹ The Applicants have said nothing in their Opposition to contest this self-evident impact on the Maine RLECs. In fact, greatly increased power and marketing strength in the market place is at the heart of the "benefits" the Applicants assert will result from their merger.

The increased economic burden will lead to further weakening of the Maine RLECs' financial health, further diminution of their capacity to sustain universal service, and decreased capacity to invest in telecommunications and broadband network and services, beyond the levels contemplated in the Maine PUC proceedings described above.

At the same time, in addition to this increased economic injury due to the loss of customers to cable telephone service and broadband service, resulting from the Merger, the Maine RLECs will also be faced by another source of injury resulting from the Merger. It should be without dispute that any competition which must exist between the Maine RLECs and cable telephone service should be between providers who are able to compete on an equal basis, and, for example, not prejudiced by unequal access to other goods and services necessary to compete or by unequal regulatory burdens. With respect to access to goods and services, it is critically important that the Maine RLECs require reasonably priced access to video programming content in order to compete with TWC's triple play. Yet, the experience of the Maine RLECs, as confirmed by

¹¹ See Declaration of Michael J. Angelakis, Exhibit 4 to Applicants' Public Interest Statement filed on April 18, 2014; "The post-transaction company will be better suited to offer an array of advanced IP voice services in competition with ILECs and other providers, and to continue to drive innovation and competition in this market" (p. 13) . . . "Post-transaction, Comcast will be able to compete more effectively with incumbent LECs by offering a unified set of seamless products and services throughout its extended footprint with greater operational and cost efficiencies". (p. 15)

filings of other small and medium-sized parties in these proceedings (see Section IV, below), has been that video content is often prohibitively expensive for small providers, who have little bargaining leverage with the content providers. The Maine RLECs cannot be expected to be able to compete fairly with TWC, when the post-merger TWC is able to obtain video programming at substantially lower pricing and favorable terms and conditions. The ability to engage in the provision of triple play service on a parity basis with TWC would not only assure the policy goal of balanced competition, but also would serve to reduce the adverse impact on universal service in the Maine RLECs' service areas caused by TWC's increasingly unequal competitive power.

III. The Applicants' Denials of Harm to Voice Service Ring Hollow

In their terse discussion of the impact of the merger on voice services in the Application, the Applicants completely ignore the issue of the impact on the small rural telephone companies, on the policy and goals of universal service (a term they do not speak), and on the ability of small rural telephone providers to compete with their growing colossus, stating only that the combined company will facilitate "a more robust alternative for voice services." (Public Interest Statement, p. 83.) In their Opposition, the Applicants do little more than repeat their mantra that "the Transaction will bring benefits to the voice marketplace by enabling the combined company to offer more advanced and innovative services to consumers¹² and making it a more robust competitor." (Opposition, p. 191.)

In support of the general declaration in their Opposition, the Applicants present scant argument. Their first point is to assert, "The Transaction will not reduce the number of voice competitors in any market, and no opponent contends otherwise." (Opposition, p. 191.) The Applicants ignore the fact that there is no need to contend that the number of competitors will be

¹² Such bold claims are questionable given the consumer ratings of Comcast and TWC which are low for customer satisfaction, value, reliability and customer support, and are "mediocre on overall satisfaction with Internet service". (See Response of Consumers Union and Common Cause to Applicants' Opposition to Petition to Deny, dated December 17, 2014, p. 11-12.)

reduced. In fact, it may be possible that the number of competitors might be increased (temporarily) as competitors of Comcast-TWC are pressured and fractured by the merged entity. But, the fact remains that the amount of competition will be reduced as the competitors of Comcast-TWC are weakened by increased costs and reduced revenue due to the increased competitive power Comcast-TWC itself predicts.

Second, the Applicants boldly assert, “Nor does any commenter challenge their benefits to competition and consumers.” (*Id.*) Making Comcast and TWC able to more vigorously compete in areas where they already have substantial market power, especially in the parts of rural areas where they choose to serve, where they already have substantial market power, and where their competitors are small, may benefit Comcast and TWC, but it does not benefit competition. Furthermore, while certain consumers (more likely in the more profitable areas) might possibly obtain more advanced and innovative voice services, while competitors become weaker, this is not a “benefit to competition,” and it is not a benefit to all consumers (unless the Commission imposes conditions which assure that the small rural competitors can, in fact, compete on an equitable level with the merged entity).

Third, the Applicants invoke their “statutory rights.” (Opposition, p. 192.) However, these “rights” are not boundless. As has been clearly articulated by the Maine PUC, those rights are conditioned by Congress in rural areas:

The TelAct contains various provisions with competing tensions and interests. While certain provisions were intended to foster competitive local exchange markets, other provisions, of equal importance, were enacted in order to preserve universal service and affordable local exchange service in high cost rural areas. It was the latter of these interests that is expressed in the TelAct’s “rural exemption” provisions under Section 251(f)(1)(A). Because this section was enacted as an “exemption,” we do not believe, as TWC and CRC suggest, that it is correct to interpret and apply it starting with the notion that competition in the ILECs’ service territories is presumed to be the dominant goal of the TelAct. ... We are not convinced, based on the legal authority cited by CRC or TWC, that Maine should follow the policy goals of North Carolina or other states that favor a presumption of “competition” when evaluating an “undue economic burden.”

* * *

Further, although TWC and CRC have attempted to argue that this Commission should analyze the benefits of competition upon universal service principles, we find that any such benefits are outweighed by the drawbacks and are not sufficient to allay this Commission's concerns that the rural ILECs may be hampered in their continuing ability to make prudent investments and fulfill their provider of last resort obligations. (MPUC 2010 Order, p. 21-22, 53)

Furthermore, any "statutory rights" alleged by the Applicants are subject to the Commission's obligation to protect and promote the policy embodied in the Communications Act, and to specifically do so when those policies and goals are threatened by a merger, such as presented here, by either denying the merger and maintaining the status quo, or by imposing conditions to protect those policies and goals, including conditions which would either preserve certain aspects of the status quo permanently or temporarily, as necessary.

The Applicants essentially argue that competition is paramount to any other interest in this proceeding. (Opposition, p. 192.) That is incorrect. The paramount interest in this merger proceeding is the public interest – in all of its facets, including the interest in universal service. Nevertheless, the Applicants state that the Commission should "remind" the Maine RLECs that the central goal of the antitrust laws and the Commission's settled policy is to protect competition, not competitors. (Opposition, p. 192.) The Maine RLECs respectfully request that the Commission remind the Applicants that although the antitrust laws may be focused on protecting competition, the Commission's responsibility in a merger approval proceeding is to protect the public interest and that the public interest includes the universal service goals in the Communications Act.

The Communications Act does not mandate the supremacy of the competition over the goals of universal service. Rather, both goals must be balanced, as stated by the Commission in the FCC 2011 Declaratory Ruling, fn. 12: "As noted by the Maine rural LECs, section 251(f) reflects a balance between the goals of universal service and local competition, which "sometimes complement and sometimes compete with each other." (Emphasis added). Accordingly, as the Maine PUC has noted, *supra*, the competitive desires of TWC and Comcast must yield to the goals of universal service and the objectives of the rural exemption and other provisions of the

Communications Act targeted to rural areas, when necessary to protect those goals and objectives.

The Maine RLECs would further point out that the two cases cited by the Applicants in support of their “reminder” (see Opposition, p. 192, fn. 600) dealt with the cellular and interexchange markets and not the local service markets in which the Maine RLECs operate, did not involve the public policy of universal service and predated the enactment of the Telecommunications Act of 1996. Again, the Applicants appear to believe that universal service policies seemingly must evaporate because they decide to engage in a merger. To the contrary, the provisions of the Communications Act mandate that universal service must be protected, and that competition does not categorically preempt universal service goals necessary to protect the interests of consumers.

IV. The Applicants’ Invocations to Testimonials of Various Commenters Do Not Satisfy Their Burden of Proof.

Much of the Applicants’ Opposition is occupied by quotations from testimonials excerpted by the Applicants from comments filed with the Commission. However, none of those testimonials address the specific issues and concerns raised and argued by the Maine RLECs regarding the impact of the merger on small rural telephone companies and the universal service goals of the Communications Act.¹³ Therefore, these testimonials do nothing to meet or satisfy the Applicants’ burden of proof on these issues.

At the same time, the Applicants have ignored the multitude of Comments and Petitions to Deny from parties who represent the public interest and parties who will be the subjects of the adverse effects of the merger. Below is a summary:

¹³ The quotations from letters from the Maine Chamber of Commerce and Kennebec Valley Chamber of Commerce, which appear in the Opposition, similarly do not address the issues and concerns raised by the Maine RLECs.

Rep. Chellie Pingree, 1st District of Maine:

In a letter dated March 5, 2014, addressed to Chairman Wheeler and Attorney General Holder (Attachment A to Reply), Representative Pingree raised many of the issues with the merger which have arisen since the filing of the Application. The concerns of the Maine RLECs with respect to the impact of the merger on access to video programming and consequently on their ability to compete with the merged Comcast-TWC on the basis of a triple play platform are echoed in the letter to the Commission from Representative Pingree. In her letter, Representative Pingree stated:

I write to ask that you block the proposed merger of Comcast and Time Warner Cable. The proposed merger would allow the new Comcast to control more than a third of the U.S. cable TV market and more than half of the U.S. bundled services for video, voice and Internet service. The anti-competitive effect of such a large player in the market for both cable television and the future of a free and open Internet seems obvious, and the public interest in affordable cable prices and an Internet that is fully open to innovation requires disapproval of this deal.

Comcast's consolidated market power in online video distribution after this merger represents just the type of failure of competition that our antitrust laws are intended to prevent, and I am very concerned that the proposed merger will have the effect of destroying the free and open competition that, until now, has defined online video distribution.

Telecommunications Association of Maine:

In Response Comments dated and posted on September 23, 2014, Telecommunications Association of Maine ("TAM") stated:

Beyond the question of whether the resulting merged entity would have the ability to exercise dominant market power to force competitors out of the market, there is the question on what the ancillary effects would be of a resulting merged entity that exercised its market power to cherry-pick video, voice and data customers in rural areas of the Nation. Without safeguards, the Federal law mandating comparable services at comparable rates for all telecommunications would swiftly fall by the wayside, and customers in rural America would run the risk of having significantly higher costs for comparable services due to the simple economics of providing service in high cost areas of the Nation. The easiest and most straightforward way to avoid this result is through the denial of the proposed merger. However, in the alternative, the FCC could adopt the same approach for video services that has benefitted voice and data customers throughout the Nation, namely treating video service as an unbundled network element. (TAM Response Comments, p. 2.)

NTCA – The Rural Broadband Association

In its Petition to Deny, dated August 25, 2014, NTCA-The Rural Broadband Association (“NTCA”) stated:

All of NTCA’s members are rural incumbent local exchange carriers, many of whom also provide video, wireless and broadband services to their rural communities. Many NTCA members also act as competitive carriers in other rural towns and outlying areas, offering voice, video, broadband, and wireless to consumers and businesses.

Not only is the merger likely to drive programming costs for NTCA’s members to untenably high levels, the combined company will be able to engage in a variety of tactics to price their services below cost to drive out competitors. The proposed merger is thus a threat to diversity, competition and the future viability of independent telcos and other smaller competitors.

For rural telcos to survive and for rural consumers to continue to receive high- quality voice, video and broadband service, competitors must be on relatively equal footing. At the very least, the Commission must not allow the creation of a mammoth full-service provider who controls the prices, terms, conditions and availability of service and content to the detriment of competitors and the consumers they all seek to serve.

The combined entity will almost certainly seek to gain regulatory favor and public relations points by offering to provide service for free to municipalities, schools, libraries and other public anchor institutions. Such promises play well to the intended audience, but this form of cross-subsidization too is particularly harmful to rural competitors and ultimately, rural consumers. Small, rural telcos serve geographically remote areas, with few, if any, large business customers. Its largest and most profitable customers are often the municipalities, the schools, the libraries, the health care and public safety institutions. Providing “free” service to these institutions would not impact the overall profitability of the merged entity, but a rural telco lacks the subscriber base to make such an offer and loss of these customers would be devastating. It would ultimately result in fewer offerings and higher prices for the entirety of these small rural communities – including the institutions that might benefit in the short-run from the “gifts” from the combined Comcast-TWC.

The proposed merger is thus a threat to diversity, competition and the future viability of independent telcos and other smaller competitors. Comcast and Time Warner cable have failed to meet their burden of demonstrating that this transaction is in the public interest. For the foregoing reasons, NTCA urges the Commission to deny the proposed merger of Comcast and Time Warner Cable. (NTCA Petition to Deny, p. 1-3, 8-9.)

Independent Telephone and Telecommunications Alliance

In its Petition to Deny, dated August 25, 2014, the Independent Telephone and Telecommunications Alliance (“ITTA”) stated:

ITTA’s members are mid-size, incumbent local exchange carriers that provide a variety of communications services to subscribers in predominantly rural areas in 45 states. In addition to voice and high-speed data offerings, all ITTA members provide video service to subscribers utilizing a variety of distribution platforms, including IPTV networks, coaxial cable systems, and fiber infrastructure.

The Commission is well aware of the public interest benefits of competition from smaller, new entrant MVPDs, and has “repeatedly found... that entry by LECs and other providers of wire-based video service into various segments of the multichannel video marketplace will produce major benefits for consumers,” including “lower prices, more channels, and a greater diversity of information and entertainment from more sources.” Should the Commission allow the proposed merger to move forward, it would pose a significant threat to the market for facilities-based video distribution and continued entry and expansion by new providers like ITTA member companies. (ITTA Petition to Deny, p. 2, 5.)

New Jersey Division of Rate Counsel and National Association of State Utility Consumer Advocates

In their Joint Comments dated August 25, 2014, the New Jersey Division of Rate Counsel and National Association of State Utility Consumer Advocates (“NJDRRC/NASUCA”) state:

On the flip side of universal service, the FCC should adopt a condition that the merged company not compel small rural local exchange carriers (“RLECs”) to provide interconnection and local number portability (“LNP”) when the RLECs claim the rural exemption for six years, to carry the RLECs through the USF/ICC transition.

[P]rotecting RLECs from competition from the mammoth combined Comcast/Time Warner will ultimately benefit the RLECs’ customers. (NJDRRC/NASUCA Joint Comments, p. 3, 27.)

Hargray Communications Group, Inc.

In its Comments, posted on August 26, 2014, Hargray Communications Group, Inc. (“Hargray”) stated:

Hargray is a small independent company that provides cable television, high speed internet, and telephone services throughout the Lowcountry region of South Carolina and areas surrounding Savannah, Georgia. Founded in 1949, Hargray’s primary focus is on delivering superior service, while keeping its rates affordable for consumers.

Currently, Hargray competes with both Comcast and TWC in a significant portion of its service territory, and is surrounded by other service areas of Comcast and TWC.

There are three key areas of concern, related to the proposed takeover, that will exacerbate the current disparity faced by small independent operators like Hargray, when competing against media giants like Comcast and/or TWC. First, Comcast will vastly expand its competitive footprint which will provide additional incentives for the post-merger company to impose financial sanctions on their competitors through escalation of rates for must have content. Second, the increased bargaining power of a combined entity will likely lower its content costs, making such an entity more difficult with which to compete. Programmers will also likely look to smaller providers with less market power to recoup revenues lost due to this increased bargaining power. Lastly, Comcast's practice of requiring that Multichannel Video Programming Distributors ("MVPDs") purchase lightly viewed channels and bundle them with more desirable content in order to have access to the content its subscribers demand. (Hargray Comments, p. 2-3.)

Horry Telephone Cooperative, Inc.

In its Petition to Condition Assignment or Transfer of Control of Licenses and Authorizations, dated August 25, 2014, Horry Telephone Cooperative ("HTC") stated:

HTC is a small, rural telephone cooperative that provides wireline voice, digital cable television, high-speed broadband Internet, and wireless services to consumers in its service areas in Horry and Georgetown Counties, South Carolina (the "Market"). As a cooperative, HTC's mission is to provide reliable state-of-the-art voice and Internet communications and video services to the community it serves at the best possible value.

It is only through HTC's expansion into the rural areas of its service area that customers in the most rural portions of the Market can subscribe to bundled video, voice, and broadband Internet services.

In light of the aforementioned public interest concerns raised by the proposed transaction, HTC requests that the Commission condition approval of the Applications on agreement by Comcast-TWC and Charter to access to video programming at MFN pricing as specified herein for a minimum of 10 years. It is rural and independent MVPDs that compete directly with large video providers that will feel the greatest impact of this merger – if approved – by relying on large competitors to provide content essential for viability and relevance in rural markets. Absent this condition, the proposed merger will harm rural MVPDs in a way that larger, nationwide video service providers will not feel, threatening the provision of video services to other unserved and rural areas in the years to come, and accordingly the applications seeking FCC consent to the merger should be denied. (HTC Petition to Condition Assignment and Transfer, p. 2, 3, 10.)

Frontier Communications Corporation

In its Petition to Deny, dated August 25, 2014, Frontier Communications Corporation (“Frontier”) stated:

As we continue to invest in broadband deployment, we recognize that our customers desire a seamless “triple-play” bundle of voice, data and video products.

Small multichannel video programming distributors (MVPDs) like Frontier cannot achieve the scale necessary to drive down programming costs, which are based upon an MVPD’s subscriber totals, to the same levels that Comcast can with this transaction. Further, Comcast would own an enormous share of the “must have” programming that customers demand and could exercise its market dominance to either outright deny such programming to its competitors or to functionally deny the programming by charging exorbitant rates for content.

For years Frontier has focused its efforts on deploying broadband to rural America, often establishing service in very remote areas where cable providers historically have been slow to deploy or will not go at all. Frontier has made these investments in our rural network at a time when its ILEC business remains heavily regulated, putting Frontier at a disadvantage against competitors like Comcast that generally have only deployed to densely-populated areas. The Commission cannot allow Comcast to further that competitive advantage by permitting this behemoth of a company to withhold OVD rights. (Frontier Petition to Deny, p. 2, 3, 9.)

In fact, the only parties who have given thought and words to these issues and concerns are unanimous in their opposition to the merger going forward, unless meaningful and effective conditions are placed on the merged entity to assure the protection of universal service and fair competition opportunities for small telecommunications providers, especially in the rural areas which Congress has mandated for careful consideration and protection. The Applicants have abdicated the field to the Maine RLECs and others who have made similar arguments.

V. Appropriate Conditions Are Necessary to Protect Universal Service in the RLEC Service Areas.

The Maine RLECs urge that the Commission (1) hold the Applicants to their burden of proof on the universal service issue and other issues, (2) carefully consider the impact of the Merger transactions on providers of universal service in rural areas and, (3) if the Applications are to be

approved, to impose conditions to protect universal service and mitigate the potential harms in rural areas.

If the merger is allowed to go forward, a reasonable set of conditions will be required to ensure the public interest goals of universal service by mitigating the undue economic burden of cable telephone competition in rural areas, to promote broadband availability by protecting the financial health of RLECs so they can invest in its deployment, and to foster equitable competition so that the RLECs can fairly compete. In order to meet these objectives, the Maine RLECs have proposed the following conditions in their Petition to Deny and continue to urge their adoption by the Commission:

A. Conditions to Mitigate of Competitive Harms in the Provision of Voice Services. The Commission should adopt reasonable conditions to mitigate the adverse economic impacts on the Maine RLECs of the increased competitive advantage and powers of the merged entity. Such mitigation would help assure that the public interest goal of universal service is preserved by allowing RLECs to maintain their financial health so that they can continue to provide universal service and to invest in the facilities necessary to bring state-of-the-art telephone service and broadband connectivity to their customers, while competing on a fair basis with other providers of such services. These purposes can be assured by the following conditions:

1. Six Year Moratorium on Access to Local Number Portability. As stated in the Maine RLECs' Petition to Deny, as a condition of any approval of the Merger, TWC and the merged entity should be required to waive access to the enhancement of local number portability ("LNP") in its provisioning of cable telephone service in any RLEC service area in which TWC was not competing prior to January 1, 2014, for a minimum period of 6 years and until the RLECs have access to video programming on a basis comparable to TWC and the ongoing changes in USF support and intercarrier compensation have been resolved and adjusted to by the RLECs. This condition would effectively maintain the current status quo in order to allow a period of time for

RLECs to plan for the full impact of competition by the merged Comcast-TWC entity, as well as to anticipate and adjust as necessary to coming changes in USF support and inter-carrier compensation. While this does not have all of the mitigation effect of a full suspension of competition, it would temper the competitive impacts on the RLECs, while allowing TWC to compete on a non-LNP basis.¹⁴

The Applicants argue that the Commission should deny the request to suspend LNP for the reason that such a request has been “squarely rejected by the Maine Commission.” (Opposition, p. 192.) The Applicants cite the MPUC 2013 Order in the Maine Suspension Proceedings in support of this broad and erroneous assertion. As described earlier, the Maine PUC declined to suspend LNP on the grounds that undue economic burden would be offset by MUSF. The Maine PUC stated, “[S]uch a suspension is unnecessary because this Commission has statutory authority ‘to ensure that provider of last resort service is available in all areas of the State at reasonably comparable rates’ through the use of a MUSF.” (MPUC 2013 Order, p. 15.) The Maine Commission has not rejected suspension of LNP as a legitimate remedy for competitive harm where necessary to prevent undue economic burden.¹⁵ When TWC filed a motion to dismiss the initial request for suspension of LNP, the MPUC denied the motion. (See Order dated July 27, 2012 in Maine Suspension Proceedings.) The MPUC then subsequently ordered that LNP be temporarily suspended pending resolution of the suspension proceedings. (Order dated August 23, 2012.) Similarly, in the MPUC 2013 Order, dated February 22, 2013, the Commission delayed the effect of the Order to June 30, 2013, until there was greater certainty regarding the mechanism for MUSF support. These actions by the Maine PUC actually apply, and thereby uphold, LNP

¹⁴ As stated in the Petition to Deny, in the proceedings before the MPUC, TWC stated that it would compete in the service areas of the Maine RLECs even if its access to LNP were suspended. The Applicants have not denied this statement.

¹⁵ Furthermore, it should be kept in mind that any statement of the Maine PUC in the Maine Suspension Proceedings which might seem to suggest that the consumer benefits of LNP may outweigh the competitive harm of cable telephone service was made in the context of the Commission’s assumption that the undue economic burden would be offset by funds from the MUSF. The Maine PUC has not ruled that competitive benefits alone are justification to deny suspension of LNP.

suspension as a valid mechanism which can be used to mitigate undue economic burden caused by cable telephone competition, where the circumstances are appropriate. Accordingly, the Maine PUC did not “squarely reject” LNP suspension, and it continues to be a reasonable remedy and a reasonable subject for a condition to be imposed by the Commission in this case.

2. Sale of Cable Systems. As proposed by the Maine RLECs in their Petition to Deny, Comcast-TWC would be required to sell an individual cable system (on a municipal franchise area basis) to an RLEC serving that area, at a price comparable to the price to be paid by Charter or Spinco for a similar cable system. This condition would enable interested RLECs to compete effectively for the “triple play,” by acquiring a video capability, while promoting the objectives of divestiture. (Comcast-TWC would be allowed to adjust the number of systems to be sold to Charter or Spinco to offset for any systems sold to RLECs.)

The Applicants claim in their Opposition that there is no basis for such a condition regarding divestiture of cable systems. (Opposition, p. 248, fn. 770.) Yet, in this proceeding, the Applicants have offered to divest cable systems and have made arrangements to do so. The reason is obvious; divestiture is a reasonable and necessary step to limit the market power of the merged entity so as to preserve some level of competition in the industry. The same reasoning applies here. If such a condition requires fewer systems being divested to Charter Communications, and divested to an RLEC, that is not an unreasonable result. Also, where the divestiture is made to an RLEC, as distinguished from Charter, there is the additional benefit of offsetting the financial harm to a small rural telephone company and thus an increase in the overall public benefits achieved by the divestiture.

B. Mitigation of Programming Inequity. The Maine RLECs have proposed that the merged Comcast-TWC entity should be required to provide Maine RLECs with access to cable television transmissions received at its local head ends, subject to terms, conditions and costs comparable to those applicable to the local Comcast-TWC providers. The Commission should also

consider for adoption reasonable conditions proposed by other parties seeking to protect reasonable access by small providers to programming. In particular, the Maine RLECs support the positions of the American Cable Association, Horry Telephone Cooperative, Inc. and Hargray Communications Group, Inc. in this regard. Such conditions would enable the Maine RLECs to compete on the triple play on a level playing field by assuring programming content is available to RLECs on reasonable and equitable terms.

In their Opposition, the Applicants attempt to dismiss the condition proposed by the Maine RLECs for equitable access to video programming, by stating that “the Maine Commission has already rejected” such a request. (Opposition, p. 248, fn. 770.) However, the Maine PUC Order cited by the Applicants in support of this argument is not the order issued in the proceeding in which some of the Maine RLECs made a similar request. The relevant Order was actually issued in *Time Warner Cable Information Services (Maine), LLC, Request for Arbitration of Interconnection Agreement Between Time Warner Cable Information Services (Maine), LLC & Lincolnville Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Co., Oxford West Telephone Co. and UniTel, Inc.*, Maine PUC Docket Nos. 2012-00133-00137) Order (Oct. 5, 2012). In that case the Maine PUC declined to mandate a proposed “Video Equity Provision (VEP)” because it was not relevant to a proceeding for the arbitration of interconnection agreements. (MPUC Order, p. 10.) The PUC did not address the substantive merits of the VEP. In fact, the Commission concluded its discussion of the VEP by stating, “our decision on this issue in the context of this proceeding in no way prejudices the question of whether the carriers’ relative access to video programming is relevant to the proceeding in Docket Nos. 2012-00198, *et al.* [the Maine Suspension Proceedings]” Thus, the Maine PUC expressly left open the relevancy of the inequity of TWC’s access to video programming to TWC’s economic and competitive impacts on the Maine RLECs. In fact, in this merger case, in which the public interest and protection of competition abilities of small providers are greatly at stake, the issue of competitive impacts of the program purchasing power of Comcast-TWC on the financial condition of the Maine RLECs and other

competitors is especially relevant, and the adverse impact of such inequity is specifically subject to the Commission's authority and responsibility to remedy such adverse impacts to the public interest by the imposition of conditions, such as reasonable access to video programming.¹⁶

C. Access to Network Facilities. In recognition that the Merged Entity will have singular control over an expansive and non-duplicable network of facilities essential to the effective and competitive provision of telecommunications services, and that it will have the economic power and physical assets to dominate smaller local competitors, the Maine RLECs have proposed that TWC would be required to make facilities, such as dark fiber, interoffice facilities and fiber to the premise, accessible to competitors on reasonable terms at any technically feasible point and at rates based on TWC's total element long run incremental cost. This condition would provide an offset to the dominant market power of Comcast-TWC and an opportunity for competitors to compete on equitable terms.

The Telecommunications Association of Maine joins in such a request:

Cable companies, such as Time Warner and Comcast, should be required to offer colocation at their head end units and access to transmission facilities at TELRIC pricing, just as the current voice and data providers do. This could then be combined with an obligation that companies "pass through" content to customers of competitors using a form of TELRIC pricing. This could work by requiring cable companies to allow access to content by a competitor exactly as if the customer of the competitor was a customer of the cable provider. The cable provider would pay the content providers the amounts they normally would pay for adding a new customer of their own under whatever contractual agreement exists at the time with the content provider. The competitive provider would then pay the cable provider a TELRIC rate for access, which would cover the cost to the cable provider under their contract with a regulatorily established additive. In this way, everyone will benefit. The content providers will get paid in the manner established by the privately negotiated contracts. The cable provider will have all costs covered plus an additional additive. The competitors will have access to content at competitive rates that are able to take advantage of the economies of

¹⁶ In addition to their misplaced relevance on an alleged Order of the Maine PUC, the Applicants claim here, without explanation, as was the case in the Maine PUC proceeding, that they cannot extend equity in video acquisition with respect to programming content to unaffiliated providers. (Opposition, p. 248, fn. 770.) However, they make no such claim with respect to their own programming or that of their affiliates. The Commission should condition any approval to assure, at the least, video equity with regard to programming of the Applicants and their affiliates, and to require video equity with regard to non-affiliates unless the Applicants prove that it is not possible (including that it is not possible to achieve by good faith negotiations between the merged entity and its unaffiliated programmers).

scale enjoyed by the dominant market provider. The net effect will be a competitive structure that will help to ensure truly comparable services at comparable rates for all telecommunications services, as required by federal law. In this way, the clear anti-competitive dangers created by the proposed merger between Time Warner Cable and Comcast will be lessened, and the principles of Universal Service will be preserved. (TAM Response Comments, p. 3.)

The Applicants, whose business models have benefited greatly from the advantages of unbundling requirements and TELRIC pricing, object vehemently to any reciprocity regarding such requirements, as their power grows in the voice, broadband and video markets. They assert that there is no justification for such requirements being imposed on them as a condition of the merger, “because there will be no reduction in competition within the broadband, video, voice or any other service market.” (Opposition p. 312). The record in this case disproves their broad assertion. In particular, the record in this case regarding the competitive impact on the Maine RLECs of the merged entity is constitutes “transaction-specific harm” that justifies such a condition to levelize the playing field.

The Applicants further argue that such wholesale requirements reduce the incentives on the Applicants and others to deploy new facilities and improve service. The Applicants fail to acknowledge the even greater disincentive to invest which is imposed on particular sectors, such as the ILECs, when such wholesale obligations are imposed on them alone. While such conditions may be unusual provisions applicable only in special circumstances (Applicants’ Opposition, p. 313, fn. 998), the major market impacts of the merger present such exceptional circumstances, which now warrant the reduction in the unequal imposition of such requirements between ILECs and cable telephone companies.

The Maine RLECs respectfully submit that the special circumstances of this megamerger warrant conditions being imposed to restore and assure competitive parity between Comcast-TWC and the Maine RLECs. As noted earlier, the proposed temporary suspension on LNP availability is

a valid mechanism for promoting this objective. Reciprocity with regard to wholesale obligations is also a valid mechanism.¹⁷

VI. Conclusion

For all of the reasons stated herein, the Maine RLECs respectfully request that the Commission disregard the arguments against Maine RLECs in the Applicants' Opposition and grant the Maine RLECs' Petition to Deny the Applications, unless its approval of the Applications is subject to the conditions described herein, or reasonably comparable conditions.

Respectfully submitted,

Lincolnvile Networks, Inc., Tidewater Telecom, Inc., Oxford Telephone Company, Oxford West Telephone Company, and UniTel, Inc.

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Date: December 23, 2014

Their Attorney

¹⁷ The Maine RLECs believe that the recommendation of NJDRC/NASUCA that Comcast and Time Warner be required to open their networks to voice competitors under section 251 and 252 when they serve a majority of residential and small business customers in an area, (NJDRC/MASUCA Joint Comments, p. 25), is a step in the right direction, but also believe that compete reciprocity is required to achieve the objective of fair competition.

CERTIFICATE OF SERVICE

I, Joseph G. Donahue, hereby certify that on December 23, 2014, I caused true and correct copies of the foregoing Petition to Deny to be served electronically to the following:

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CHELLIE PINGREE
CONGRESS OF THE UNITED STATES
1ST DISTRICT, MAINE

COMMITTEE ON APPROPRIATIONS
SUBCOMMITTEES
AGRICULTURE, RURAL DEVELOPMENT, AND
RELATED AGENCIES
INTERIOR, ENVIRONMENT, AND RELATED
AGENCIES

Attachment A

March 5, 2014

The Honorable Eric Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th St SW
Washington, DC 20554

Dear Attorney General Holder and Chairman Wheeler,

I write to ask that you block the proposed merger of Comcast and Time Warner Cable. The proposed merger would allow the new Comcast to control more than a third of the U.S. cable TV market and more than half of the U.S. bundled services for video, voice and Internet service. The anti-competitive effect of such a large player in the market for both cable television and the future of a free and open Internet seems obvious, and the public interest in affordable cable prices and an Internet that is fully open to innovation requires disapproval of this deal.

The merger will likely lead to accelerated growth in cable rates. Cable TV rates are already higher than ever, and consumers have little to no choice between providers. According to the most recent Federal Communications Commission (FCC) Annual Report on Cable Industry Prices, the average price for a cable package increased 4.8% compared to a 2.9% increase in the Consumer Price Index (CPI) over the same period.¹ The FCC found that prices for expanded basic cable service increased at a average growth rate of 6.1% from 1995-2012, while the CPI increased at 2.4% over the same period.

In addition, the proposed merger could jeopardize the public's interest in a free and open Internet. The Internet continues to provide a fertile environment for commerce and innovation. Access to broadband should not be jeopardized by further market concentration in an entity that not only has a last-mile monopoly in large swaths of the country, but also has control over must-have broadcast content. Although it is reassuring that Comcast is subject to the current "net neutrality" rules through 2018 as a condition of its 2011 merger with NBC-Universal, these conditions are not a substitute for a truly competitive marketplace that allows competitors, especially competing video content providers, access to their customers through a free and open Internet. In fact, we've already seen deals between Comcast and over-the-top providers of streaming video content who rely on Comcast to access their customers agreeing to pay Comcast for a guaranteed level of service on a competing product. The proposed transaction will further

¹ FCC Report on Cable Industry Prices, MM Docket No. 92-266, June 7, 2013.

increase the leverage Comcast has in changing the balance of power in the video delivery market.

I am also very concerned about Comcast's market power in the video distribution market in the context of our antitrust laws. The purpose of our antitrust laws is the prevention of behavior that tends to destroy competition in a given market. The most robust source of competition for these cable companies comes from over-the-top providers as an increasing number of consumers are "cutting the cord" and watching TV programming via the Internet. Now that over-the-top providers will be forced to pay Comcast for access to a market they were able to reach freely through their own innovations and ingenuity, new entrants to that market will face much higher barriers to entry. Other established video delivery services will also likely be forced to pay Comcast to access customer bases they've built on a previously level playing field. In addition, any new entrants will face a new and significant barrier to market access. Comcast's consolidated market power in online video distribution after this merger represents just the type of failure of competition that our antitrust laws are intended to prevent, and I am very concerned that the proposed merger will have the effect of destroying the free and open competition that, until now, has defined online video distribution.

In the end, a merger between Comcast and Time Warner will lead to higher rates, less competition and a loss of innovation and choice in programming. In short, it will be bad for the American consumer and this merger should not be allowed to go through.

I trust that you and your staffs will provide exacting scrutiny of this proposed merger, and, in accordance with all applicable rules, I urge you to fully consider the views expressed here during the course of your examination. If you have any questions, need clarification or additional resources, please don't hesitate to reach out to me or my staff.

Thank you for your attention to these views.

Sincerely,

A handwritten signature in dark ink, appearing to read "Chellie Pingree", with a long horizontal flourish extending to the right.

Chellie Pingree
Member of Congress